



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2021-0155]

RIN 1625-AA87

Security Zone; Cleveland Harbor, Cleveland, OH

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone for navigable waters surrounding the Port of Cleveland, First Energy Stadium, The Rock and Roll Hall of Fame, and Voinovich Bicentennial Park from east of the Cuyahoga River entrance to west of the Voinovich Bicentennial Park and outward from shore, including inlets, to the navigation channel as marked by navigation buoys, but not including the channel. The security zone is needed to protect the public, participants, and spectators of the 2021 NFL Draft from terrorist and similar criminal acts, accidents, or other incidents detrimental to public safety. Entry of persons, vessels or objects into this zone when under enforcement is prohibited unless specifically authorized by the Captain of the Port Buffalo or her representative.

DATES: This rule is effective from 8 a.m. on April 29, 2021, through 11:59 p.m. on May 1, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0155 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Natalie Smith, Waterways Management Division, U.S. Coast

Guard Marine Safety Unit Cleveland; telephone 216-937-6007, email D09-SMB-

MSUCleveland-WWM@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

| | |
|--------|---|
| CFR | Code of Federal Regulations |
| COTP | Captain of the Port |
| DHS | Department of Homeland Security |
| FR | Federal Register |
| NFL | National Football League |
| NOAA | National Oceanic and Atmospheric Administration |
| NPRM | Notice of proposed rulemaking |
| § | Section |
| U.S.C. | United States Code |
| VHF-FM | Very High Frequency-Frequency Modulated |

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it would be contrary to the public interest. Due to the potential impact to public safety and high visibility associated with the 2021 NFL Draft, providing a public notice and comment period would be contrary to the security zone’s intended objective of protecting the public, as certain security measures cannot be shared with the public associated with enforcing the security zone. Additionally, the remaining time left to implement the zone is not sufficient to provide public notice and comment. However, failing to implement the zone would present an unacceptable risk to the public and participants involved in the NFL draft.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for a 30-day notice period to run would be impracticable and contrary to the public interest.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Buffalo has determined that potential hazards associated with the 2021 NFL Draft are a security concern for the surrounding area. This event is highly visible and expected to draw large crowds in a concentrated area. Hazards include potential security threats, violent or disruptive public disorder, delivery of a weapon of mass destruction, launch of a stand-off attack weapon, delivery of an armed assault force, or other similar criminal act or accident. This rule is needed to protect people, vessels, property, and the marine environment in the navigable waters within the security zone at various times throughout the event.

IV. Discussion of the Rule

From April 29, 2021, through May 1, 2021, the 2021 NFL Draft will be held in Cleveland, Ohio. The primary venue for the 2021 NFL Draft is First Energy Stadium, which is adjacent or proximate to Cleveland Harbor and Lake Erie. A secondary venue hosting NFL Draft-related activities includes the Rock and Roll Hall of Fame and surrounding open areas adjacent to the water. The security zone will cover all navigable waters surrounding the Port of Cleveland, First Energy Stadium, The Rock and Roll Hall of Fame and Voinovich Bicentennial Park from east of the Cuyahoga River entrance to west of the Voinovich Bicentennial Park and outward from shore to the navigation channel as marked by navigation buoys, but not including the channel. The zone will include all inlets to the shore. The duration of the zone is intended to protect people, vessels, property and the marine environment in these navigable waters while the event

and related activities are taking place. No vessel, person, or object will be permitted to enter or remain in the security zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-year of the security zone. Vessel traffic will be able to safely transit around the security zone, which will impact a small designated area and will be enforced only during the event and event-related activities. The security zone is in a location where commercial vessel traffic is expected to be minimal during enforcement and navigation channels will remain open and outside the zone; additionally, vessel traffic would be authorized to transit the security zones to the extent compatible with public safety and security; persons and vessels would be able to operate in the surrounding area adjacent to the security zone during the enforcement period; persons and vessels would be able to enter or remain within the security zone if authorized by the COTP Buffalo or a designated representative. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning

COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a security zone that will prohibit entry within waters surrounding First Energy Stadium and The Rock and Roll Hall of Fame. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T09-0155 to read as follows:

§ 165.T09-0155 Security Zone; 2021 NFL Draft, Cleveland Harbor, Cleveland, Ohio.

- (a) Location. The security zone will encompass all waters of Cleveland Harbor

East Basin that are within the following boundary to the shore including inlets and harbors: starting from a point at 41° 30' 41.24" North Latitude and 81° 41' 47.6" West Longitude and proceeding North-Northwest until intersecting a point at position 41° 30' 49.222" North Latitude and 081° 41' 52.375" West Longitude (the Green East Basin Channel Lighted Buoy number 5 on NOAA chart 14839); thence proceeding Southwest until intersecting a point at 41° 30' 18.22" North Latitude and 81° 42' 41.71" West Longitude; thence proceeding South until intersecting a point at position 41° 30' 14.3" North Latitude and 81° 42' 41.714" West Longitude (Green Main Entrance Light number 5 on NOAA chart 14839) (NAD83).

(b) Definitions. As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Buffalo. Authority to designate may be delegated by the Captain of the Port Buffalo. A designation need not be in writing.

(c) Regulations. (1) In accordance with the general regulations in § 165.33, entry into, transiting, remaining, or anchoring within this security zone is prohibited unless authorized by the Captain of the Port Buffalo or a designated on-scene representative.

(2) This security zone is closed to all traffic, except as may be permitted by the Captain of the Port Buffalo or their designated on-scene representative.

(3) The "on-scene representative" of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant, petty officer, or Federal, State, or local law enforcement officer who is designated by the Captain of the Port Buffalo to act on her behalf.

(d) Enforcement period. This section will be enforced intermittently from 8:00 a.m. on April 29, 2021, through 11:59 p.m. on May 1, 2021.

Dated: March 26, 2021.

L. M. Littlejohn,
Captain, U.S. Coast Guard,
Captain of the Port Buffalo.

[FR Doc. 2021-06728 Filed: 3/31/2021 8:45 am; Publication Date: 4/1/2021]